

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	FCC 03-13
)	

**COMMENTS OF THE MONTANA UNIVERSAL
SERVICE TASK FORCE
(MUST)**

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SUMMARY

MUST is a group of rural telecommunications providers concerned about the preservation of true universal service in rural America. The companies include Montana Independent Telecommunications Systems, Valley Telecommunications, Inc., Triangle Telephone Cooperative Association, Inc., Project Telephone Company, Inc., Northern Telephone Cooperative, Inc., Nemont Telephone Cooperative, Inc., InterBel Telephone Cooperative, Inc., Central Montana Communications, Inc., 3 Rivers Telephone Cooperative, Blackfoot Telephone Cooperative and C. C. Communications.

In our view, the current definition of universal service sets the bar far too low due to the Commission's inordinate focus on technological and competitive neutrality at the expense of other long established universal service principles. The definition should be set at a level consistent with the services deployed throughout the nation. Once that level has been established, any carrier that can meet the standard, regardless of technology, should be eligible for support (provided the carrier meets the other criteria set forth in the Act). The Commission must be aware that promoting competition at all costs is not necessarily in the public interest.

Specifically, voice grade access should include unlimited local usage at the exchange level for a flat monthly fee. Equal access should be added to the definition. Finally, the Commission should clarify that states are free to impose their own technical and service quality standards as part of the definition of universal service and as prerequisites to eligibility for universal service funding. The Commission should also create its own technical and service quality standards, at a minimum to govern instances where a state lacks jurisdiction.

I. INTRODUCTION AND BACKGROUND

The Montana Universal Service Task Force (MUST) is a group of telecommunications companies¹ concerned about the preservation of true universal service in rural America. MUST is made up primarily of telephone cooperatives and independent rural telephone companies. The geographic areas served by these companies have some of the lowest population densities in the continental United States.

As is the case with most small rural ILECs, the history of MUST companies has been one of providing service in areas where larger companies had no interest. In fact, their most significant growth over the past decade has occurred when the local Bell company divested rural exchanges it no longer wanted. As a general rule, these are exchanges with a few hundred to at most a few thousand access lines.

For roughly the past 50 years, these companies have been the sole providers of universal service in their service areas. They have been responsive to their subscribers' needs and throughout their history have prided themselves in providing service that is at least reasonably comparable to the service provided in urban areas of their state. Moreover, the companies serve

¹ The companies include Montana Independent Telecommunications Systems, Valley Telecommunications, Triangle Telephone Cooperative Association, Project Telephone Company, Northern Telephone Cooperative, Nemont

all those who request service within the geographic boundaries of our service areas. What began for the MUST companies as Rural Utility Service (RUS) requirements to build robust networks and offer high quality services in order to acquire RUS loans have evolved into elements now deeply ingrained in the companies' corporate culture.

The boards of directors and trustees are fully cognizant of the responsibility they bear in connecting their subscribers locally and to the outside world. In regions served by MUST companies, it is not unusual for a subscriber to be ten miles from his or her nearest neighbor and fifty miles from the nearest town. Given the often-harsh climates, this ability to stay connected takes on an added importance.

For this reason, MUST has watched the process of defining universal service and the designation of "competitive" eligible telecommunications carriers (CETCs) in rural areas with some concern. As we have reviewed the qualifications of some recently designated CETCs, that concern has grown to a sense of alarm.

We believe that we are witnessing the degradation of the historical definition of universal service to a "lowest common denominator" of service. We feel strongly that this direction is contrary to the letter and spirit of the Telecommunications Act of 1996. MUST's hope is that a re-examination of the definition of universal service will be the first step in rectifying this alarming situation.

II. STATEMENT OF THE ISSUES

In its Recommended Decision of July 10, 2002, the Federal-State Joint Board on Universal Service generally recommended that the Commission not modify the existing list of services supported by universal service. The Joint Board, however, was unable to reach

Telephone Cooperative, Central Montana Communications, 3 Rivers Telephone Cooperative, Inc., InterBel Telephone Cooperative Inc., Blackfoot Telephone Cooperative and CC Communications.

agreement on whether equal access to interexchange service (equal access) satisfies the statutory criteria contained in section 254(c) of the Communications Act of 1934, as amended, and should be added to the list of supported services. The Notice of Proposed Rulemaking released by the Commission on February 25, 2003, seeks comments regarding the Joint Board's recommendations and positions.

III. MUST COMMENTS ON JOINT BOARD'S RECOMMENDED DECISION

General Comments

When making its recommendations to modify the existing definition of universal service, the Joint Board concluded, under the public interest criteria and the competitive neutrality principle, that it is appropriate to consider the impact of adding a service to carriers' eligibility for ETC status. While lowering standards for certain ETC designations may potentially increase competition and lower prices in the short term, from a longer-term perspective, the Joint Board's conclusion is extremely troubling.

The purpose of a proceeding like this one is to determine as a national policy what level of service should be available to all subscribers including rural, insular and low-income consumers. A blueprint of that service level is already available: a historical understanding of what has been considered to be basic service in the past and is therefore part of subscribers' existing expectations. At a minimum, those are the services that are essential to education, public health or public safety. Those are the services subscribed to by a substantial majority of residential consumers. Those are the services being deployed by telecommunications carriers in public telecommunications networks and which have been deemed consistent with the public interest, convenience and necessity. While the promotion of competition is an important

directive of the Act, it should not take precedent over the goals of universal service. From our perspective, service quality standards should be established and carriers designated as ETCs should be held to those standards. The cart is before the horse if a regulatory agency first determines what level of service various carriers are able to achieve and then lowers service standards to that level. The result is a lowering of service quality to the lowest common denominator. Such an approach is hardly a fair and reasonable balance among universal service principles and competitive neutrality. Rather, we believe it is a degradation of universal service principles masked in the cloak of unsustainable or artificial competition.

Voice Grade Access to the Public Switched Network – Local Usage

A 1996 Joint Board decision recommended a local usage component within the definition of voice grade access. Subsequently, the 2002 Joint Board decision concludes that unlimited local usage should not be added to the list of core services. While recently acknowledging that unlimited local usage is widely subscribed to by residential customers, the Joint Board expressed concerns that imposing an unlimited local usage requirement could force some carriers to forego ETC status, because this requirement may conflict with some state requirements mandating carriers to offer metered pricing.

The 1996 Joint Board's recommendation clearly recognized the importance of the issue and the need for some regulatory authority to include some local usage in the definition of universal service. The 2002 Joint Board recommended decision punts the issue aside in the name of competitive neutrality. By basing their recommendation on a limited analysis of what services proposed ETCs may or may not be able to offer, the Joint Board has tipped the scales in favor of competition at the expense of defined universal service principles. MUST does not concur that

the conclusion strikes a fair and reasonable balance among universal service principles and competitive neutrality.

Consistent with our other comments, we advocate that the Commission establish a standard within the definition of universal service that conforms to most subscribers' expectations with respect to local usage. This should be the first step. The first step should not be to determine the lowest common denominator of local usage that the various carriers can provide and then make that the standard. Given the weight of the record on this issue and the fact that local usage has so clearly been included among the basic services that have been provided to consumers across the country for decades, our hope is that the Commission will act soon in this area.

Technical and Service Quality Standards

The Joint Board does not recommend that the Commission impose federal technical or service quality standards as a condition for receipt of universal service support; however it does recommend that the Commission seek comment on whether states lack jurisdiction over certain ETCs and, if so, whether the Commission may or should adopt service quality standards for such carriers.

The Joint Board concludes that many, if not most, states have technical and service quality standards set forth in statute or administrative rules. Moreover, certain programs, such as the Rural Utilities Service's (RUS's) loan programs, set forth service quality standards that must be met in order for borrowers to qualify for loans. These entities recognize a concept that is basic but nonetheless critical to ensuring adequate universal service: any identified service can be provided well or it can be provided poorly. Since providing it poorly generally costs less than providing it well, in the absence of standards, the incentive for competitive universal service

providers is to provide the service poorly. Therefore, compliance with technical and service quality standards is critical.

It is not sufficient to rely on standards if those standards are applicable only to selective carriers and have nothing to do with ETC designations. There should be technical and service quality standards for ETC designation that are applicable to *all* carriers seeking universal service funds. The service quality bar for ETC designation should be high enough so that customers are ensured of receiving acceptable levels of service quality, regardless of whether they are served by an incumbent ETC or a competitive ETC. There should be no incentive to push service quality down to the lowest common denominator required for survival.

A fair and reasonable balance among universal service principles and competitive neutrality requires a level playing field including service quality expectations. Carriers seeking ETC status must be held accountable to service quality standards applicable to all carriers. We are not aware of any provision in the Telecommunications Act to the effect that consumers, especially rural, insular, or low-income subscribers, should be forced to accept the absence of technical or service quality standards in exchange for the “benefits” of competition.

ETC designation carries with it the expectation of carrier accountability. It is not burdensome for a company that wants to receive funding to report on whether it is meeting those standards. The reports should be filed with the state public utility commissions for review in their annual re-certification decisions. We are not proposing that state commissions regulate previously unregulated companies. We are only suggesting that those companies that wish to receive universal service funding should be required to meet the kinds of standards that already exist in most rural areas of the country.

Equal Access

The Joint Board has not developed a majority position concerning equal access. It offers two positions for consideration by the Commission. MUST agrees with the Joint Board position that recommends including equal access in the definition of universal service. MUST agrees with the Joint Board findings that equal access satisfies the criteria set forth in section 254(c) and that section 332(c)(8) presents no obstacle to the inclusion of equal access in the list of core services supported by universal service funding.

As is the case with unlimited local usage, our experience is that subscribers, including those in rural areas, have for years considered the ability to choose their long distance provider to be fundamental and thus part of basic local service. Clearly equal access falls within the universal service principles and MUST agrees with the Joint Board affirming that position.

MUST also agrees that no legal obstacle exists to the addition of equal access to the list of supported services. Section 332(c)(8) does not prohibit the inclusion of equal access in the list of supported services. Section 332(c)(8) prevents the Commission from requiring CMRS carriers to provide equal access as part of its obligations as a common carrier. A CMRS carrier providing common carrier service is not obligated to provide equal access to its customers.

On the other hand, all carriers seeking ETC status must be held to comparable standards. If carriers, including CMRS carriers, seek to draw support from the universal service fund, they must be able to offer all the supported services including equal access. Indeed that is consistent with the principle of competitive neutrality.

MUST agrees with the Joint Board's position that equal access facilitates comparable access to telecommunications services, including access to interexchange services, in all regions of the nation as required by section 254(b). It is consistent with the public interest, convenience and necessity.

MUST takes exception to the Joint Board's alternative position that 1) including equal access on the list of supported services might reduce consumer choice in rural and high-cost areas; and that 2) excluding equal access would not jeopardize consumers' continued access to their presubscribed long distance carrier of choice since local exchange carriers are required to provide it.

Exempting one class of ETCs (CMRS carriers) from providing equal access on the basis that another class of ETCs (incumbent carriers) *must* provide equal access violates the principle of competitive neutrality. It also assumes that the CETC's customers will still subscribe to a wireline carrier in order to enjoy the benefits of equal access.

The principles of universal service and competition must be balanced. We have seen significant progress towards the achievement of universal service over the past eighty years. That progress should not be compromised for the sake of competition. If one carries the Joint Board concern over reducing customer choice to its illogical extreme, any requirement that could prohibit a carrier from qualifying for ETC status should be discarded. If the goal is to maximize customer choice including the number of carriers from which a customer can choose, then all carriers should be designated as ETCs and be eligible to draw support from the universal service fund. Clearly this is not in the public interest.

MUST agrees with the Joint Board's alternative conclusion that the principles of competitive and technological neutrality are better achieved by requiring wireless and wireline carriers to each provide equal access for universal service funding purposes. Failure to require equal access for all ETCs advantages wireless ETCs over wireline ETCs. This approach violates the principle of competitive neutrality and is potentially counterproductive to the universal service goals.

IV. CONCLUSION

MUST believes that unless the Commission's current definition of universal service is modified, service quality in rural America will be driven to a "lowest common denominator." While this may result in lowering total high cost universal service support, we do not believe it is sound public policy, nor do we believe that such an approach is consistent with the letter or the spirit of the Telecommunications Act of 1996.

In light of the requirements of the Telecommunications Act, the weight of the record already compiled by the Joint Board, and the robust level of basic service that is already being provided in rural areas across the country, we would advocate as follows:

- 1) **Voice Grade Access:** Unlimited local usage at the exchange level is already being provided at flat rates by incumbent providers across the country. Both the Joint Board and the Commission have already recognized the importance of a local usage component of voice grade access. Anything less than unlimited local usage for a flat rate at the exchange level degrades the basic service to which rural subscribers became accustomed long before the passage of the Telecommunications Act.
- 2) **Equal Access:** Regulators have been requiring incumbents to provide equal access for years. Subscribers consider the ability to choose a long-distance provider to be fundamental. This is particularly important in rural areas where so many calls are long distance and therefore the long-distance costs to subscribers can mount quickly. They must be able to shop for the best deal. A definition of universal service that does not include equal access does a disservice to rural subscribers and is an example of driving the level of universal service to the lowest common denominator.

- 3) **Technical and Service Quality Standards:** The Commission should clarify that states may impose their own standards for eligibility for universal service funding. The Commission should impose standards for eligibility in instances ETC designations clearly fall under their jurisdiction. Technical and service quality standards for all ETCs should include standards in areas such as coverage, reliability and power redundancy.
- 4) **Pro-competitiveness of Supported Services:** There are many areas served by only a few telecommunications carriers. There are many areas served by only one telecommunications carrier. In some areas, it is not inconceivable that competition in rural areas by multiple ETCs receiving universal service support is contrary to the public interest.

Granting additional carriers ETC status in an attempt to satisfy the principles of competitive and technological neutrality in lieu of requirements that carriers provide basic levels of service to which subscribers have become accustomed is not in the public interest. The Joint Board and the Commission should stop molding decisions that ignore the fact that the benefits of competition and new technologies do not necessarily outweigh the benefits of other universal service principles. Competition must not jeopardize the universal service offerings subscribers have come to expect. Their analysis should begin and end with a determination of the highest possible level of basic service already ubiquitously deployed in the best interests of rural subscribers. To be eligible for universal service support, carriers should be required to meet that service standard. Service standards should not be lowered to a level that merely is attainable by the largest number of carriers.

The current definition of universal service will inevitably drive service quality, especially in rural areas, to a lowest common denominator because technological and competitive neutrality have somehow taken precedence over the best interests of the subscribers. However, we are still relatively early in the process. Few incumbent carriers have been forced to degrade their service quality levels, although those decisions are beginning to be made. We still have time to reverse this process by imposing a definition that is sufficiently robust to truly meet the principles and goals of universal service set forth in the Telecommunications Act.

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